

Caribbean Communications Corp. d/b/a St. Thomas-St. John Cable TV and United Steelworkers of America, Local 8249, AFL-CIO. Case 24-CA-6702

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On April 19, 1993, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 24-RC-7465. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On June 8, 1993, the General Counsel filed a Motion for Summary Judgment. On June 10, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of the Board's resolution of a challenged ballot in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). There are no factual issues regarding the Union's request for information because the Respondent admitted that it refused to furnish the information. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Caribbean Communications Corp. d/b/a St. Thomas-St. John Cable TV, a U.S. Virgin Is-

lands corporation, has been engaged in the distribution of television signals by cable TV to its customers in the U.S. Virgin Islands, and operates a facility located at St. Thomas, U.S. Virgin Islands.

In the course and conduct of its business operations, the Respondent, during the 12-month period preceding the issuance of the complaint, derived gross revenues in excess of \$100,000 from the distribution of television signals received from the mainland United States to its customers in the U.S. Virgin Islands, including the advertising of national brand name products.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held April 23, 1992, the Union was certified on February 19, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

Included: All customer service representatives and customer service representative clerk.

Excluded: All groundskeepers, linemen and installers; confidential, managerial and data processing employees; guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since February 16, 1993, the Union has requested the Respondent to bargain and to furnish information which is necessary and relevant to its role as exclusive bargaining representative of the unit employees. Since March 3, 1993, the Respondent has refused. We find that the refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after March 3, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union,

and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Caribbean Communications Corp. d/b/a St. Thomas-St. John Cable TV, St. Thomas, U.S. Virgin Islands, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, Local 8249, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

Included: All customer service representatives and customer service representative clerk.

Excluded: All groundskeepers, linemen and installers; confidential, managerial and data processing employees; guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in St. Thomas, U.S. Virgin Islands, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 13, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, Local 8249, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

Included: All customer service representatives and customer service representative clerk.

Excluded: All groundskeepers, linemen and installers; confidential, managerial and data processing employees; guards and supervisors as defined in the Act.

WE WILL, on request, provide the Union with information that is necessary and relevant to its role as the

exclusive bargaining representative of the unit employees.

CARIBBEAN COMMUNICATIONS CORP.
D/B/A ST. THOMAS-ST. JOHN CABLE TV